File No. B.Misc/52

Legal Deptt.

B **BRANCH**

P.16(D)
1952

Subject:— Miscellaneous Bills

File No. B Misc/52

Gen. 39f

Both sections 57 and 58 as proposed to be inserted in the Bombay Agricultural Debtors Relief Act, 1947 Act by clause 13 of the original Bill provided for giving juridsiction to the Court within the limits of which the immovable property or the land, as the case may be, was situate. But as already pointed out in Legal Department's U.R. No 18436, dated 19th November 1951, the scheme of section 57 was, during the passing of the Bill at the instance of certain non-official members, changed and it was decided to give jurisdiction to the Court where the debtor resided. Section 58 however was passed both by the Legislative Assembly and the Legislative Council without any amendment. This means that the Legislature deliberately intended that applications by agricultural labourers should be made to the Court within the limits of whose jurisdiction the land of such labourer was situate. There is nothing absurd in providing that applications by agricultural labourers in the merged territory shall be made to the Court of Civil Judge (Senior Division) of the area in which the land is situate and that applications by other debtors and creditors in the merged territory shall be made to the Court of the Civil Judge (Senior Division) within the limits of whose jurisdiction the debtor resides. No amendment of section 58 on the lines suggested by Shri Khadilkar is, therefore, necessary. Moreover section 58 is no longer operative as the period of 6 months laid down therein for the making of applications has already expired.

Sd/- J.R.Dhurandha r
8/1

o.c.

Additional Secretary to Governm

U.R. to D.D., No. 822, dated the 19th January 1952.

Mjr/3/7

4 Cs.

Legal Department.

Pages 9-10 of the Statement. The proposal of the Madras Government is tha registration of adoption deeds should be made compulsory as a safeguard against fraud and vexations litigation. At present only the authority to adopt is required to be compulsorily registered under section 17(3) of the Indian Registration Act, 1908,,and a deed of adoption, as distinguished from an authority to adopt, does not require registration, This is because it is not the deed but the adoption itself that creates the statu of adopted son and confers an interest in the property of the adoptive father. Unless the law provides that an adoption will not be valid, unless it is made by a deed, it would not be proper to provide that the registration of adoption deed should be made compulsory. Once such registration is made compulsory no other evidence can be given inproof of such adoption except the documents itself and therefore the suggestion made by the Inspector General of Registration that such registered deed should only be one of the ways of effecting adoption is not feasible.

Pages 21 to 23 ante. Authentication means more than attestation. In view of the difference in the meaning of the two terms, the amendment suggested by the Madras Gobernment is section 33(4) of the Registration Act may be agreed to. No amendment seems necessary in section 33(c) of the Registration Act or section 85 of the Evidence Act.

Pages 39 to 45 ante. Two proposals are made by the Madras Government. The first proposal is that a new clause shouldbe added to section 17(i) so as to provide for the compulsory registration of decrees ane orders of Civil and Revenue Courts outside the Madras State affecting immoveabl property within the Madras State if the value of the property is Rs. 100 or more. The second proposal is that section 89 should be amended so as to provide that every Revenue or Civil Court passing any decree or order affting immoveable property or

rejecting, returning or permitting the withdrawal or restoring to its file any plaint or other document of the nature mentioned above, should send copies of the decree or order to the registering officer for record in his Book No. 1. The second proposal was referred by Home Department to the High Court and it will appear from the High Court Registrar's reply dated 20th December 1951 that their Lordships are not in favour of the proposed amendment. The reasons given by their Lorddhsips for not accepting the second proposal also apply to the first proposal. Decrees and orders of Courts are not at present made compulsorly registrable as the Court proceedings are always open to the public and copies thereof are easily available for the members of the public. It is for the purchaser to take the further safeguard to compel the vendor to make a declaration of his title so that the transferee can, in case of a false declaration, be prosecuted. The proposed amendment would necessarily increase the burden on the litigants out of proportion to the object proposed to be achieved and seems unnecessary.

Both the proposals may not, therefore, be agreed to.

Sd/- J.R.Dhurandhar
12/2

D.C.

Additional Secretary to Government.

U.R. to R.D. No. 2311, date, 12th February 1952.

Mjr/3/7
4 Cs.

Legal Depart.

Para . 1 of the draft reply (at p 39 ante). In ... paragraph the Local Self Government and Public Health Department proposes to accept the suggestion of the Drug Controller that the proposed definition of "Drug" in the Drugs Act, 1940, should be modified to include- (1) all medicines for internal or external use of human beings or animals, (2) all substances recognised in the prescribed Pharmacopoeias and any supplement or addenda to any of them, (3) all substances intended to be used for in the treatment, mitigation or prevention of disease in human beings or animals, other than medicines or substances exclusively used or prepared for use in accordance with the Ayurvedic or Unani system of medicine, (4) substances (other than food) intended to affect any structure or any function of the body of human beings or animals as may be notified by Government, (5) substances as are used for the destruction of vermins or insects which cause disease in human beings or animals and as may be notified by Government. Out of five classes mentioned above, substances falling under classes (1) and (3) are included in the definition of "drug" as it exists in the present Drugs Act, 1940. Any suggestion to expand the scope of the said definition requires careful consideration. As pointed out in para. 1 of the Government of India's letter No. F. 4-3/49-D, dated the 14th May 1952, the proposed amendments to the Drugs Act are sought to be made under entry No. 19 in the Concurrent List (List III) in the Seventh Schedule to the Constitution. The said entry is "Drugs and Poisons" and specifies the legislative competency of the Parliament to legislate in relation to drugs. In construing the word "Drugs" in the said entry, courts would construe the same in its accepted and ordinary meaning and may have recourse to the

legislative ...

Legislative practice which the Legislature had in view when the Constitution Acts were framed. An attempt on the part of the Legislature to expand the meaning of the term beyond the above limit wouldbe unconstitutional. The important circumstance to be borne in mind in this connection is that, so far as the powers of the Parliament in regard to "drugs" are concerned, they are much narrower than that of a State Legislature. In dealing with "drugs", a State Legislature can make use of such entries as "Public health", Entry No. 8 in List II, or "Production, distribution and supply of goods", Entry No. 27 in List II. It would not be open to the Parliament to have recourse to such entries in the exercise of its powers under the Entry "Drugs and Poisons" in the concurrent field. Furthermore as pointed out in Fowle v. Fowle (75 L.T. 514) whether a substance is a drug or not is to a great extent a question dependent upon its use. In that case, the court points out that, although bees wax is sometimes used in the preparation of medicines, it would be worng to hold that its use can be prohibited or controlled as a drug. These remarks would apply to the suggestion that such substances as "Sandalwood oil" should beborught within the scope of "drugs", because they are sometimes used in the case of certain aliments. The suggestion that insecticides should also be brought within the scope of the Drugs Act is open to the same objection. A drug does not necessarily mean every chemical. If the suggestion of the Drugs Controller is to beaccepted, common salt would fall under the Entry "Drugs and Poisions". Any suggestion to the Government of India to widen the scope of the definition of drugs must relate to the scope of the Entry itself and the fact that under the said entry the powers of the Parliament cannotbe related to such entries as "Public Health" or

"Production...

"Production and supply of goods." In the Prohibition case in spite of the fact that the State Legislature could control alcoholic substances not only under the entry "Intoxicating liquors" but also under the entry "Public Health", the Supreme Court viewed with disfavour restrictions imposed on the use of medicinal and toilet preparation. In these circumstances, it would not be legal to suggest to the Government of India to widen the definition of "drugs" in the manner suggested by the Drugs Controller.

Para 5 of the draft reply.- The suggestion made in the said paragraph that an Inspector should be authorised to carry on a search and seize articles without following the provisions of sections 102 and 103 of the Criminal Procedure Code is not proper and is not likely to be accepted by the Government of India. A similar difficulty is being experienced in prohibition offences and only relaxation made in the Act is that Panch witnesses need not be from the same locality as required by the Criminal Procedure Code (see section 117 of the Bombay Prohibition Act, 1949). In the absence of respectable Panch witnesses in carrying out a search or seizure, the allegation against the Inspector will always be that he planted the articles and a court is not much likely to rely on the evidence of the Inspector and the subordinates of the Drug Controller that they are officers of some status.

Para. 6 of the draft reply. - In regard to penalties, it is no doubt true that it is necessary to provide for enhanced penalities. But such enhanced penalties should not exceed three years rigorous imprisonment. The fine to be imposed may, however, be unlimited. It is true that a First Class or Presidency Magistrate will not beable to impose a

fine.....

fine of an amount higher than Rs. 1,000. But in that case, he should be so empowered, notwithstanding anything contained in section 32 of the Criminal Procedure Code. Otherwise the accused will have to be committed to the Sessions Court and trials will be delayed. Moreover, if punishments are execessive and harsh, the courts will require a much higher stadard of proof and will not be willing to convict the accused.

Sd/- J.R.Dhurandhar
4/8

oc. Additional Secretary to Government.

U.R. to L.S.G. & PlH.D. No. 12913 dated 4th Aug. 1952.

Mjr/3/7
4 Cs.

Legal Department.

The provision in section 43 of the Bombay Housing Board Act, 1948, follows similar provisions in other enactments such as section 78A of the Calcutta Improvement Act, 1911, section 101 of the Cawnpore Urban Area Development Act, 1943 and section 17 of the Bombay Town Planning Act, 1915. If buildings are to be considered separate from land, their market value would be the value of the materials of their structures. It would be apparent that although the value of the land itself would appreciate in value in consequence of improvement schemes, there would be no increase in the value of the materials of the buildings themselves. There cannot be betterment of buildings valued separately from land.

Sd/--J.R.Dhurandhar

O.C. 3/10

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No 16308/B dated the 4th October 1952

Mjr/3/7

4 Cs.

Office of the R.L.A .

The subject-matter of the Bombay Forward Contracts Control Act, 1947, and of the Forward Contracts (Regulation) Bill sponsecred by the Central Government falls in the same entry of List I, namely, entry No. 48, "Stock Exchanges and Future Markets". As there cannot be two laws on the same subject, it would be necessary to include a provision in the Central Bill for the repeal of the provisions of the Bombay Act in areas in which the proposed Central Act would come into force. If the intention is that recongnition given to the three Associations and their by-laws, etc., should be saved, it will be necessary to include in the proposed Central Act the necessary saving provision. The Government of Indian should be requested to make the necesary provisions in the Bill as will be finally passed by Parliament. When such provisions are made, the question raised by the Finance Department, as to "what will happen to the Bombay Forward Contracts Control, Act, 1947;" will not survive.

Sd/- B.M.Lad

o.c. 3/10

Remembrancer of Legal Affairs.

U,R. To F.ØD. No. 16323/B, dated the 4th October 1952.

Mjr/3/7

4 Cs.

Legal Department.

The amendment of the Bombay Prevention of Gambling Act, 1887 would create the following practical difficulties, section 1 of the Act provides:

> "It extends to the city of Bombay, to the Island of Salsette, to all railway station houses without the said city and island, and to all places not more than three miles distant from any part of such station houses, respectively, and all or any of its provisions may be extended from time t time by the Provincial Government, by an order published in the Official Gazette, t any local area in the Presidency of Bombay.
>
> The Provincial Government may from time to time, by an order published as aforesaid, cancel or vary any order made by it under this section."

In the case of Ahmedabad, the Home Department has stated at p 10. that the prevention of Gambling Act has already been made applicable to the municipal district and contonment of Ahmedabad by G.N.G.D. No. 328, dated the 17th January 1888. The amendment of section 12 of the Act in the manner proposed by the Home Department would not, therefore, be in force throughout the State of Bombay. It is no doubt true that power is given to Government to extend the Act to any local area in the State of Bombay, It is, however, doubtful whether under this provision the Act can be extended to rest of the Province of Bombay by a single notification,. As the Bombay Police Act extends to the whole of the State of Bombay the proposed hew section 130A would automatically extend to the whole of the State of Bombay. Secondly, the expression "gaming" in section 12 of the Bombay Prevention of Gambling Act has a rest ricted meaning as defined in section 3 of the Act. Under sub-section 3 of Section 61 of the Bombay District Police Act, 1890 the expression "gaming " has not been define and will be construed widely by a Court. Thirdly, if section 12 of the Act is amended in the manner now suggested by the Home Department and extended throughout the area of the Stat of Bombay the other two clauses namely, (b) and (c) also will be automatically extended throughout the State of Bombay as the second and thrid paragrph cannotbe separated from para 1 of section 12 of the Act. Fourthly, under the Bombay District Police Act no reference is made to instruments of gaming four with a person joining any assembly for the purpose of gaming;

Whereas under section 12 of the Act the Police gets automati power to seize the instruments of geming found in such publi street on or about the person of those whom he shall so arrest. It may also bepointed out that even though the Bombay Prevention of Gambling Act,1887, was already on the Statute Book when the Bombay District Police Act was passed n the year 1890, the provisions in clause (i) of section 61 of the said Act were enacted. The said provisions of the Act were afterwards re-enacted under sub-section (3) of section 61 of the District Police Act in the year 1948. Assembly in a public street for purpose of gaming or wagering is more in nature of a public nuisance and therefore it is more correct to put it in the Police Act, It is not the "Preparation for the offence of gambling" that is sought to be penalised, but the public nuisance.

For all these reasons the Home Department shouldconsider whether section 12 of the Prevention of Gambling Act should still be amended instead of the Bombay Police Act.

Sd/- B.P.Dalal
10/10
O.C.
Additional Deputy Secretary to
Government.

U.R. to H.D. No. 16826/B, dated the 11th October 1952.

Mjr/3/7

4 ~s

Legal Department.

It appears from Local Self Government and Public Health Department file underlying the R.L.A's opinion No.12913, dated the 4th August 1952 that the Government of India have already made a proposal to amend section 22(c) of the Drugs Act, 1940 by substituting a new proviso for the existing proviso so as to provide that the provisions of section 102 and 103 of the Code of Criminal Procedure shall apply to certain articles under the Act. It is also proposed by the Government of India to amend section 27 of the Act so as to enhance the penalty of imprisonment up to three years. The effect of the proposed amendment would be that the offences under the Act become congnizable and the provisions of section 102 and 103 of the Code of Criminal Procedure having been proposed to be inserted the Inspector automatically gets power to enter and carry on search of the premises without a specific order from the District Magistrate or the Chief Presidency Magistrate. In view of the above amendment by the Government of India in the Drug Act the difficulty now pointed out by the Drug Controller that an Inspector has to await order from a District Magistrate or the Chief Presidency Magistrate before he can proceed to seize the articles would no longer be experienced by him. The Local Self Government and Public Health Department may, therefore, await the decision of the Government of India regarding the amendment of the drugs act.

Sd/-
o. 9/9

For Additional Secretary to Government.

U.R. to L.S.G. and P.H.D. No. 14831-B, dated the 11th September, 1952.

Legal Department.

Section 3 of the Lord Reay Maharashtra Industrial Museum Act, 1947, specifies the aims and objects of the museum. Clause (1) of the section provides that one of the aims and objects is to serve as an educative institution for the general public with a view to illustrating various branches of science. Clause (2) also states that another aim and object is to show by means of exhibits, machines, models, pictures and charts the origin, development and modern practice of each branch of science. The expression 'Scinece used in both these clauses is wide enough to include 'forestry'. It is true that both in clause (1) and (2) the reference is made in particular to industry, agriculture and commerce. But this reference is by way of illustration and would not restrict the comprehensive meaning of the word 'scinece' as used in both the clauses (Cf. Santosh Kumar Jain v The State (1950) S.C.R. 303). Rules made under section 21 of the Lord Reay Maharashtra Industrial Museum Act, 1947, which refer to forestry are, therefore, intra vires and no amendment of section 3 is necessary. The question whether 'Agriculture' includes 'forestry' does not arise.

Sd/- J.R.Dhurandhar

o.c. 29/10

Additional Secretary to Government.

U.E. t E.D. No. 17997/B, dated the 30th October 1952.

Mjr/3/7

4 Cs.

Legal Department.

The Home Department has requested the Legal Department to advise on the expediency of the amendment of section 33(1)(r)(iii) of the Bombay Police Act 1951, with a view to providing for the power to control the use of a loud speaker near public place. In section 33(1)(r)(iii) of the said Act there is already a provision for making rules for controlling or prohibiting the use of a loud speaker in any public place or place of public entertainment. A similar provision was made in section 39A of the Bombay District Police Act, 1890 (Please see the last line thereof). In the criminal case referred to in this file, the District Magistrate should have made the rules regarding loud speaker under section 39A of the Bombay District Police Act, 1890. Instead the District Superintendent of Police had made the rules made section 48 'ii) (b) which could not bedeemed to be legal for the reasons given by the R.L.A. at page 5. If the power is taken now by amending section 33(1)(r)(iii) to control or prohibit the use of a loud speaker near a public place i.e in the vicinity of a public place, it would create hardship on persons owning open private compounds or shops adjoining a public street or a place of public amusement. These persons would, after the amendment, be required to take out a licence or even be prohibited from using a loud speaker if the neeessary rules are made. Many companies or firms dealing in loud speakers would be prohibited from playing loud speakers in their shops as a sort of advertisemnt. No such provision existed in section39A of the Bombay District Police Act, 1890 and no need for the amendment was felt since 1948 in which year the said section was amended in so far as it related to the use of a loud speaker.

The R.L.A. in his note at page 5 ante has stated that "suitable steps can now be taken under the present

law of regulating loudspeakers both in respect of music or speeches or for amplifying any other sound."

If the need for such power is necessary from the administrative point of view, it would be expedient to amend the section in question. In Samual Saia vs. People of the State of New York (334 U.S. 558) the SupremenCourt of New York held that a Municipal Ordinance Prohibiting the use of amplifying devices casting sound on streets and public places was unconstitutional as it violated the constitutional right of free speach. But this case can be distinguished as the impugned ordinance did not lay down standards for prohibition or control. Propper limitation for the exercise of the powers will have to be considered, if it is decided to amend the Act.

Home Department may see and decide whether section 33 may be amended.

Sd/-
o.c. 9/12
for Additional Secretary to Government.

U.R. to H.D., No. 20742-B, dated the 10th December 1952.

Mjr/3/7
4 Cs.

Legal Department.

The reply proposed to be given to the Government of India on the lines of Registrar's letter on p. 9 ante would not be adequate. In addition to the class of persons specified in thesaid letter it will also be necessary to save the following classes of persons from the operation of new section 12A proposed to be inserted in the Indian Medical Council Act, 1933, namely:-

(i) Medical practitioners who possess qualifications specified in the Schedule to the Bombay Medical Act, 1912, and not specified in Schedule I to the Indian Medical Council Act, 1933, and who have not been registered under the Bombay Medical Act, 1912 before the commencement of the proposed legislation;

(ii) persons who are undergoing training for possessing qualifications specified in the Schedule to the Bombay Medical Act, 1912.

(iii) practitioners registered under the Bombay Medical Practioners Act, 1938;

(iv) practitioners registered under the Bombay Homoeopathic Act, 1951.

2. It may also be brought to the notice of the Government ofIndia, that besides the University of Bombay, there are the Poona, Gujarat and Baroda Universities which have degree courses in medicine and surgery and that these Universities should also be included in the First Schedule to the Indian Meeical Council Act, 1933.

3. As regards safeguarding the interest of holder of foreign qual ifications attention of the Government of India may beinvited to H. & L G. Department letter No. 3150/33/ 19142-H, dated the 22nd August 1949, as suggested by L.S.G. & P.H.D.

Sd/- J.R.Dhurandhar
28/11
Additional Secretary to Government.

o.c.

U.R. to L.S.G. & P.H.D. No. 20056/B, dated the 29th November 1952